

**U.S. POLICY AND PRACTICE WITH RESPECT TO
THE USE OF RIOT CONTROL AGENTS BY
THE U.S. ARMED FORCES**

HEARING
BEFORE THE
SUBCOMMITTEE ON READINESS AND MANAGEMENT
SUPPORT
OF THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
ONE HUNDRED NINTH CONGRESS
SECOND SESSION

SEPTEMBER 27, 2006

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U.S. POLICY AND PRACTICE WITH RESPECT TO THE USE OF RIOT CONTROL AGENTS BY THE U.S. ARMED FORCES

WEDNESDAY, SEPTEMBER 27, 2006

U.S. SENATE,
SUBCOMMITTEE ON READINESS
AND MANAGEMENT SUPPORT,
COMMITTEE ON ARMED SERVICES
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m. in room SR-232A, Russell Senate Office Building, Senator John Ensign (chairman of the subcommittee) presiding.

Committee members present: Senators Ensign and Akaka.

Majority staff members present: Ambrose R. Hock, professional staff member; Gregory T. Kiley, professional staff member; Sandra E. Luff, professional staff member; Derek J. Maurer, professional staff member; and Lynn F. Rusten, professional staff member.

Minority staff members present: Evelyn N. Farkas, professional staff member; Michael J. McCord, professional staff member; and Richard W. Fieldhouse, professional staff member.

Staff assistants present: David G. Collins and Benjamin L. Rubin.

Committee members' assistants present: D'Arcy Grisier and Alexis Bayer, assistants to Senator Ensign; Stuart C. Mallory, assistant to Senator Thune; Richard Kessler and Darcie Tokioka, assistants to Senator Akaka; and Luke Ballman, assistant to Senator Dayton.

OPENING STATEMENT OF SENATOR JOHN ENSIGN, CHAIRMAN

Senator ENSIGN. Good morning, everyone. I want to welcome all of you here, along with Ranking Member Akaka. I would like to congratulate Senator Akaka on his primary victory. That's official, that's on the record, and that's not classified. [Laughter.]

Senator AKAKA. Thank you.

Senator ENSIGN. The Readiness and Management Support Subcommittee meets this morning to receive testimony on riot control agents, more commonly referred to as tear gas, and their use by our men and women in uniform.

I'm joined here today not only by Senator Akaka, but his staff and my staff. It really has been a pleasure to work together over the last few years, and I say that with all sincerity, especially on issues like this that can be very sensitive. It's important that not

only Senator Akaka and I work well together, but that our staffs also work well together.

We are also honored to have with us today Joseph A. Benkert, Principal Deputy Assistant Secretary of Defense for International Security Policy (Acting), and Brigadier General Otis G. Mannon, Deputy Director for Special Operations, J-3, the Joint Staff.

Welcome, gentlemen. I understand that later we will move into a closed session, as our witnesses tell me that their answers to many of the questions are classified. I appreciate that, but, following opening statements, I would like to ask just a few basic questions.

Our focus this morning is on the use, or apparent lack of use, of riot control agents by our military in Afghanistan and Iraq. I'm interested to learn from the witnesses today their assessment of the current rules of engagement as they pertain to the use of tear gas on the battlefield.

It is my belief that American military commanders at all levels should be authorized to employ riot control agents consistent with legislation passed last year by Congress in order to save the lives of American service men and women, coalition partners, and innocent civilians. I think we'd all agree that tear gas can be an essential alternative to the use of lethal weapons in combat. Contrary to the law, it is unacceptable that our military is, under current policy, banned from using tear gas for any purpose on the battlefield. Police officers in any city in America can use tear gas to gain control of chaotic situations and avoid the loss of life, and it would seem to be merely common sense that our men and women carrying out the global war against Islamic fascism be afforded that same authority.

I know when I speak to Nevadans about this issue, they are astonished to learn that our military cannot use tear gas in the hunt for al Qaeda. I believe this is not right, and it must change. Last year, I sponsored legislation that made clear the policy of the United States is that riot control agents are not chemical weapons and that the President may authorize their use as legitimate, legal, and nonlethal alternatives to the use of deadly force.

Further, that, as provided in Executive Order 11850, and consistent with the resolution of ratification of the Chemical Weapons Convention, riot control agents may be employed by members of the Armed Forces in war in defensive military modes to save lives.

My amendment also required a report on the use of riot control agents by our military. That amendment last year was passed into law and included in the National Defense Authorization Act (NDAA) for Fiscal Year 2006. I'm still waiting on the report, which now is almost 3 months overdue.

It is my belief that the use of riot control agents is wholly consistent with U.S. obligations under the laws of land warfare and our treaty obligations, and its effectiveness in certain situations is demonstrated routinely by law enforcement agencies all over the world.

In my own State of Nevada, the Las Vegas Metropolitan Police Department tells me that they use tear gas on a regular basis for riot control and the extraction of barricaded individuals. As a matter of fact, they used tear gas within the last 2 months to flush out

a barricaded subject from his home. That individual was taken into custody without injury.

As much as Las Vegas uses tear gas, there have been no deaths associated with its use. In towns and streets throughout Iraq and Afghanistan, marines and soldiers are going house to house in an attempt to flush out armed terrorists. In carrying out this vital mission, structures are destroyed and people are killed, and some of that death and destruction could be avoided if we allowed our military to use tear gas instead of bullets.

I don't think it's unreasonable to believe that marines and soldiers have lost their lives in situations that could have been avoided if this important tool was at their disposal.

Secretary of Defense Donald Rumsfeld, in testimony before the House Armed Services Committee, described the restriction on the use of riot control agents as a straightjacket. He went on to point out that our soldiers and marines are authorized to shoot and kill people in situations where tear gas is prohibited. This is a lethal lapse in judgment.

I don't know if the incident in Haditha, where 24 Iraqi civilians lost their lives, would have turned out any different had the marines there been allowed to use tear gas to flush out the civilians. What I do know is that those marines did not have the option of using tear gas that day, and were left only with the lethal alternative.

We continually talk about providing our men and women in uniform all the tools they need to accomplish their mission. Regardless of one's personal opinion on the war in Iraq and Afghanistan, I think we can all agree that, by restricting the use of tear gas, this administration is not providing our military all the tools legally available to them.

In closing, I look forward to hearing from our witnesses if they believe the use of tear gas by our men and women in uniform would be a plus or a minus on the battlefield. I'm not asking you to interpret international treaties. Lawyers get paid to do that sort of thing. I'm more interested in hearing whether or not the marine on the ground would benefit from being able to use this legal, non-lethal alternative.

Senator Akaka, I welcome any opening statement that you may have.

[The prepared statement of Senator Ensign follows:]

PREPARED STATEMENT BY SENATOR JOHN ENSIGN

Good morning everyone.

The Readiness and Management Support Subcommittee meets this morning to receive testimony on riot control agents, more commonly referred to as tear gas, and their use by our men and women in uniform.

I'm joined today by my good friend and ranking member on the subcommittee, Senator Akaka.

We are also honored to have with us today Joseph A. Benkert, Principal Deputy Assistant Secretary of Defense for International Security Policy (Acting), and Brigadier General Otis G. Mannon, Deputy Director for Special Operations, J-3, The Joint Staff.

Welcome gentlemen.

I understand that later we will move into a closed session, as our witnesses tell me their answers to many of my questions are classified.

I appreciate that, but following opening statements I would like to ask a couple of basic questions I believe the answers to which are unclassified.

Our focus this morning is on the use, or apparent lack of use, of riot control agents by our military in Afghanistan and Iraq.

We will be interested to learn from the witnesses today their assessment of the current rules of engagement as they pertain to the use of tear gas on the battlefield.

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I'm more interested in hearing whether or not the marine on the ground would benefit from being able to use this legal, nonlethal alternative.

STATEMENT OF SENATOR DANIEL K. AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I want you to know that I feel so fortunate to be working with you and your staff, and I've enjoyed working with you on this committee.

I also want to welcome our guests, our witnesses, to this hearing. Because the subject matter of the hearing will involve classified matters, we will conduct almost the entire hearing in closed session and limit ourselves only to opening statements at this brief portion of this hearing.

The subject of today's hearing, the military use of riot control agents, has a history going back to the Vietnam war era. Our military in the Department of Defense (DOD) was involved in the creation of President Ford's Executive Order 11850 of April 8, 1975, which established U.S. policy on the military use of riot control agents in war. That policy, which remains in full effect today, as required by law, bans the "first use of riot control agents in war, except in defensive military modes to save lives." According to that policy, all use of riot control agents in war "is prohibited unless such use has presidential approval in advance."

Likewise, the military and the DOD were deeply involved in the U.S. negotiations on the Chemical Weapons Convention and in the process leading to Senate consideration and approval of the resolution of ratification of that treaty. The Chemical Weapons Convention bans the use of riot control agents as a method of warfare, which was accepted by the executive branch, the Joint Chiefs of Staff, the DOD, and the Senate, with a condition that clarifies several circumstances in which the U.S. military could use riot control agents in peacetime, in peacekeeping military operations, and not as a method of warfare. It is important to note that this U.S. policy and the Chemical Weapons Convention obligations are in our national security interests, because they help our military forces avoid being attacked with chemical warfare agents and riot control agents. Nobody appreciates that more than our military.

Last year, Congress enacted section 1232 of the NDAA for Fiscal Year 2006 which was originally sponsored by Senator Ensign. That provision restates the longstanding U.S. policy on the military use of riot control agents, and it requires a report by the President on six issues related to military use of riot control agents. We understand that the administration is nearly finished preparing that report, and today's hearing will offer us a chance to learn the status of the administration's efforts. We look forward to hearing from our witnesses.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT BY SENATOR DANIEL K. AKAKA

Mr. Chairman, I want to welcome our witnesses to this hearing. Because the subject matter of the hearing will involve classified matters, we will conduct almost the entire hearing in closed session, and limit ourselves only to opening statements at this brief portion of the hearing.

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We understand that the administration is nearly finished preparing that report, and today's hearing will offer us a chance to learn the status of the administration's efforts. We look forward to hearing from the witnesses.

Senator ENSIGN. Thank you, Senator Akaka.

Mr. Benkert, do you have an opening statement?

Mr. BENKERT. Thank you, Mr. Chairman. I will submit an opening statement on behalf of both myself and General Mannon.

STATEMENT OF JOSEPH A. BENKERT, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR INTERNATIONAL SECURITY POLICY (ACTING); ACCOMPANIED BY BRIG. GEN. OTIS G. MANNON, USAF, DEPUTY DIRECTOR FOR SPECIAL OPERATIONS, J-3, THE JOINT STAFF

Mr. BENKERT. Mr. Chairman, Ranking Member Akaka, it's my pleasure, and Brigadier General Mannon's pleasure, to appear before you today to testify about U.S. policy and practice with respect to the use of riot control agents by the U.S. Armed Forces.

Mr. Chairman, I would like to begin by recognizing your work, Senator Akaka's work, and that of this subcommittee, on this important issue. Like you, this administration wants to ensure that our men and women in uniform have the full range of options available to them to carry out their mission. Your amendment on riot control agents in the NDAA for Fiscal Year 2006 has furthered this cause. The presidential report required by this act is comprehensive and will be provided in the coming weeks. We have surveyed and catalogued the regulations, guidance, and training on riot control agents in this report. We have obtained inputs from the military departments and from the combatant commanders. The information that I'll share with you today is similar to, and consist with, the information that we've compiled for this report.

The policy governing the use of riot control agents by the U.S. Armed Forces, as you and Senator Akaka have said, is expressed principally in the Chemical Weapons Convention, the resolution of ratification of the Chemical Weapons Convention, and Executive

Order 11850. The administration agrees with the policy statement in the NDAA for Fiscal Year 2006, section 1232, colloquially sometimes called the "Ensign Amendment," which says, "It is the policy of the United States that riot control agents are not chemical weapons, and that the President may authorize their use as legitimate, legal, and nonlethal alternatives to the use of force that, as provided in Executive Order 11850 and consistent with the resolution of ratification of the Chemical Weapons Convention, may be employed by members of the Armed Forces in war, in defensive military modes, to save lives, including the illustrative purposes cited in Executive Order 11850."

As you are well aware, the capabilities of weapons or weapons systems, both lethal and nonlethal, utilized by our military, and the tactics and procedures for their use, are inherently sensitive. Riot control agents are one of the nonlethal weapons that our military may use, under certain circumstances, and thus most of the issues covered by the report will need to be addressed in the closed session.

I would also like to note that when I refer to riot control agents in my testimony, I'm referring to chemicals not listed in a Chemical Weapons Convention schedule which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure. This includes, for example, tear gas and pepper spray. I am not referring to the broader class of nonchemical, nonlethal weapons that may sometimes be used for riot control or other similar purposes, such as foams, water cannons, beanbags, or rubber bullets.

The DOD has issued regulations, doctrine, and training materials providing guidance as to when riot control agents may be used. As I've noted, the primary legal bases for these materials are Executive Order 11850, Renunciation of Certain Uses in War of Chemical Herbicides and Riot Control Agents, which was issued by President Ford in 1975, and the Convention on the Prohibition of Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction, commonly referred to as the Chemical Weapons Convention, which the United States ratified in 1997.

I need to emphasize that the use of riot control agents must comply with applicable law, including treaties and the law of war. Any use must be consistent with our obligations under the Chemical Weapons Convention, and any use must be consistent with Executive Order 11850.

It may be difficult for many Americans to understand why their Armed Forces can use riot control agents only in defined circumstances when they see their local law enforcement agencies using them effectively every day, as Senator Ensign has noted. The United States military must operate within the parameters of the Chemical Weapons Convention and Executive Order 11850, which constrain the ability of our Armed Forces to use riot control agents in offensive operations in wartime and obviously do not apply to our colleagues in law enforcement.

The military departments have established requirements that personnel receive training on riot control agents before they are authorized to carry or employ them. I would note that this is not the typical training that recruits receive during boot camp to teach

them to protect themselves against chemical agents, but specialized training on riot control agent deployment.

Annual training of such servicemembers also provides an opportunity for supplemental training in the use of riot control agents. For example, in accordance with the Geneva Conventions of 1949 and the Hague Convention of 1907, military personnel who may employ riot control agents—such as military police—are required to receive annual instruction of the Law of Armed Conflict, which includes the subject on the permissible use of riot control agents when relevant to operational duties.

I would emphasize, as I have just explained, that DOD, military department, and combatant command directives, doctrine, regulation, operational plans, and training materials are consistent with U.S. law and policy on the use of riot control agents; namely, the Chemical Weapons Convention and Executive Order 11850. This includes authorization and approval guidance, as well as employment procedures and practices.

Before U.S. military personnel may use riot control agents, they must have proper authorization. Pursuant to Executive Order 11850, presidential approval is required prior to riot control agent use in war in defensive military modes to save lives. Separate regulations delegate to the Secretary of Defense advance authority to authorize a use of riot control agents in peacetime. However, certain peacetime uses of riot control agents have been delegated to the combatant commands and the Chiefs of Services, such as uses at U.S. facilities and installations for riot control, installation security, civil disturbance, operations training, and noncombatant emergency evacuation operations. When U.S. forces have employed riot control agents, they have done so in accordance with U.S. and international law, policy, and regulations, both in the United States and abroad.

In conjunction with the preparation of the report required by your amendment, we initiated a review of the authorities applicable to the use of riot control agents, under various circumstances, in light of the changing environment in which armed conflicts are taking place. In such a dynamic environment, the peacekeeping, law enforcement, and traditional battlefield roles of deployed units may be present at different times within the same theater of operations. The use of riot control agents will be evaluated based on the particular unit or mission involved and the particular facts and circumstances of the mission at the requested time.

I would like to conclude, Mr. Chairman, by highlighting the continuing validity of Executive Order 11850. Executive Order 11850, which has not been modified or rescinded since it was issued, remains in effect.

Thank you, again, Mr. Chairman, for your personal attention to this issue. General Mannon and I would be happy to respond to any questions you may have in the closed session.

[The prepared statement of Mr. Benkert follows:]

PREPARED STATEMENT BY JOSEPH BENKERT

Chairman Ensign, Ranking Member Akaka, and members of the subcommittee, it is my pleasure to appear before you today to testify regarding “U.S. policy and practice with respect to the use of riot control agents by the U.S. Armed Forces.”

Mr. Chairman, I would like to begin by recognizing your work on this important issue. Like you, this administration wants to ensure that our men and women in uniform have the full range of options available to them to carry out their mission. Your amendment on riot control agents to the National Defense Authorization Act for Fiscal Year 2006 has furthered this cause. The presidential report required by this act is comprehensive and will be provided in the coming weeks. We have surveyed and cataloged regulations, guidance, and training on riot control agents. We have obtained inputs from the military departments and views of the combat combatant commanders. The information I will share with you today is similar to and consistent with the information that we have compiled for the report.

The policy governing the use of riot control agents by the U.S. Armed Forces is expressed principally in the Chemical Weapons Convention, the resolution of ratification of the Chemical Weapons Convention, and Executive Order 11850. The administration agrees with the policy statement in the National Defense Authorization Act for Fiscal Year 2006, section 1232 (the "Ensign Amendment"); namely, "It is the policy of the United States that riot control agents are not chemical weapons and that the President may authorize their use as legitimate, legal, and nonlethal alternatives to the use of force that, as provided in Executive Order 11850 (40 Fed. Reg. 16187) and consistent with the resolution of ratification of the Chemical Weapons Convention, may be employed by members of the Armed Forces in war in defensive military modes to save lives, including the illustrative purposes cited in Executive Order 11850."

As you are well aware, the capabilities of weapons or weapons systems, both nonlethal and lethal, utilized by our military, and tactics and procedures for their use, are inherently sensitive. Riot control agents are one of the nonlethal weapons that our military may use under certain circumstances and thus most of the issues covered by the report will need to be addressed in closed session.

I also would like to note that when I refer to "riot control agents" in my testimony today I am referring to chemicals not listed in a Chemical Weapons Convention schedule which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure. This includes for example, tear gas and pepper spray. I am not referring to the broader class of nonchemical nonlethal weapons that may sometimes be used for riot control or other similar purposes such as foams, water cannons, bean bags, or rubber bullets.

The Department of Defense has issued regulations, doctrine, and training materials providing guidance as to when riot control agents may be used. As I have noted, the primary legal bases for these materials are Executive Order 11850, Renunciation of Certain Uses in War of Chemical Herbicides and Riot Control Agents, which was issued by President Ford in 1975, and the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (commonly referred to as the "Chemical Weapons Convention"), which the United States ratified in 1997. I need to emphasize that use of riot control agents must comply with applicable law, including treaties and the law of war. Any use must be consistent with our obligations under the Chemical Weapons Convention and any use must be consistent with Executive Order 11850.

It may be difficult for many Americans to understand why their Armed Forces can use riot control agents in only defined circumstances when they see their local law enforcement agencies using them effectively every day. The United States military must operate within the parameters of the Chemical Weapons Convention and Executive Order 11850, which constrain the ability of our Armed Forces to use riot control agents in offensive operations in wartime and do not apply to our colleagues in law enforcement.

The military departments have established requirements that personnel receive training on riot control agents before they are authorized to carry or employ them. I would note that this is not the typical training that recruits receive during boot camp to teach them to protect themselves against chemical agents, but specialized training on riot control agent deployment.

Annual training of servicemembers also provides an opportunity for supplemental training in the use of riot control agents. For example, in accordance with the Geneva Conventions of 1949 and the Hague Convention of 1907, military personnel who may employ riot control agents, such as military police, are required to receive annual instruction on the law of armed conflict, which includes the subject of the permissible use of riot control agents, when relevant to operational duties.

I would emphasize, as I have just explained, that Department of Defense, military department, and combatant command directives, doctrine, regulations, operational plans, and training materials are consistent with U.S. law and policy on the use of riot control agents, namely the Chemical Weapons Convention and Executive Order

11850. This includes authorization and approval guidance, as well as employment procedures and practices.

Before U.S. military personnel may use riot control agents, they must have the proper authorization. Pursuant to Executive Order 11850, Presidential approval is required prior to riot control agent use in war in defensive military modes to save lives. Separate regulations delegate to the Secretary of Defense advance authority to authorize the use of riot control agents in peacetime. However, certain peacetime uses of riot control agents have been delegated to the combatant commands and chiefs of Services such as uses at U.S. facilities and installations for riot control, installation security, civil disturbance operations training, and noncombatant emergency evacuation operations.

When U.S. Armed Forces have employed riot control agents, they have done so in accordance with U.S. and international law, policy, and regulations both in the United States and abroad.

In conjunction with the preparation of the report required by the Ensign Amendment, we initiated a review of the authorities applicable to the use of riot control agents under various circumstances in light of the changing environment in which armed conflicts are taking place. In such a dynamic environment, the peacekeeping, law enforcement, and traditional battlefield roles of deployed units may be present at different times within the same theater of operations. The use of riot control agents will be evaluated based on the particular unit or mission involved and the particular facts and circumstances of the mission at the requested time.

I would like to conclude by highlighting the continuing validity of Executive Order 11850. Executive Order 11850, which has not been modified or rescinded since it was issued, remains in effect.

Thank you again, Mr. Chairman, for your personal attention to this issue and I would be happy to respond to any questions you may have in closed session.

Senator ENSIGN. Thank you.

Do you have anything to add General Mannon?

General MANNON. No, sir, just good morning. It's an honor to be here, and I look forward to answering your questions in closed session.

Senator ENSIGN. I just have a couple of quick questions, and I think that you would be able to answer those in open session. Correct me if I'm wrong on that.

But, basically, on riot control agents, you mentioned the training. Can you just give us an idea of how long it takes to train somebody in the use of riot control agents? How long does it take to train a soldier or marine in the use of riot control agents?

Mr. BENKERT. Mr. Chairman, I would prefer to answer this in closed session. General Mannon, I think, could amplify this in closed session, as well. Obviously, this will depend on the type of units, and I think, when we get into that, we're going to be getting into operationally sensitive material.

Senator ENSIGN. Okay. As far as the report is concerned, I understand that you all feel that the report is very close to being completed. I was told that it, maybe, is just a few weeks away. Is that your understanding?

Mr. BENKERT. We hope that's true. The report is currently with the Secretary. You've requested a presidential report, so then it will also need White House review.

Senator ENSIGN. The anticipation on the White House review—do you have any idea about how long that will take, as well?

Mr. BENKERT. Sir, I can't predict that. I expect a couple of weeks, but I can't predict how long it will take.

Senator ENSIGN. But you're within a very short period of time of sending it over to the White House?

Mr. BENKERT. That's correct.

Senator ENSIGN. Okay.

I think that's all I have. I think we'll move now to closed session, unless you have anything else, Senator Akaka?

Senator AKAKA. No questions at this session.

Senator ENSIGN. Okay. We are adjourned; we will now move to closed session.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JOHN ENSIGN

NONLETHAL TECHNOLOGIES

1. Senator ENSIGN. Mr. Benkert and General Mannon, what nonlethal technologies in development are at a technology readiness level that they could be deployed in the area of responsibility within 6 months?

Mr. BENKERT. [Deleted.]

General MANNON. [Deleted.]

URGENT NEEDS STATEMENTS SYSTEM

2. Senator ENSIGN. Mr. Benkert and General Mannon, what capabilities have been identified by the warfighters through the Urgent Needs Statements System and have they been addressed by the acquisition community?

Mr. BENKERT. [Deleted.]

General MANNON. [Deleted.]

RIOT CONTROL TECHNIQUES

3. Senator ENSIGN. Mr. Benkert and General Mannon, what are the current techniques being utilized within the prison system in Iraq to quell riots and prevent injuries?

Mr. BENKERT. [Deleted.]

General MANNON. [Deleted.]

4. Senator ENSIGN. Mr. Benkert and General Mannon, what systems are in development that could assist those managing prisons with Multinational Corps-Iraq?

Mr. BENKERT. [Deleted.]

General MANNON. [Deleted.]

QUESTIONS SUBMITTED BY SENATOR DANIEL K. AKAKA

PSYCHOLOGICAL IMPACT OF RIOT CONTROL AGENT USE

5. Senator AKAKA. Mr. Benkert and General Mannon, last year there were international accusations that the U.S. military had used chemical weapons in Fallujah. These incorrect accusations were based on the legal U.S. military use of white phosphorous in combat operations in Fallujah. If the U.S. military were to use riot control agents routinely in offensive operations in Iraq and Afghanistan, requiring them to wear gas masks and causing temporary incapacitation of civilians, could that cause a significant negative reaction among the local population or the international community? For example, could it make it harder to win the "hearts and minds" of the Iraqi population, or provide insurgents and jihadists with a powerful propaganda tool to portray the U.S. military as using poison or gas on innocent Iraqi civilians?

Mr. BENKERT and General MANNON. The U.S. military may use riot control agents consistent with Executive Order 11850 and the Chemical Weapons Convention. It is possible that accusations of U.S. violations of the Chemical Weapons Convention would be made if the U.S. military were to use riot control agents in circumstances that were not "defensive military modes" under E.O. 11850.

OPERATIONAL IMPACT OF RIOT CONTROL AGENT USE

6. Senator AKAKA. General Mannon, if U.S. military forces were to use riot control agents routinely in offensive operations in Iraq and Afghanistan, would it require our forces to carry and wear additional equipment that could hinder their mobility and operational flexibility? For example, would it require them to carry and wear

gas masks during riot control agent operations, in addition to all the other equipment, weapons, body armor, and communications gear they carry into combat? If so, could carrying and wearing the gas mask (and any additional riot control agent equipment required) impede their operational mobility or ability to communicate effectively in tactical operations?

General MANNON. [Deleted.]

DESIRABILITY OF FOREIGN USE OF RIOT CONTROL AGENTS

7. Senator AKAKA. Mr. Benkert and General Mannon, from a military and a policy point of view, would we want hostile military forces to use riot control agents against our military forces? Would that be in our interest? Or would it be better if hostile military forces did not use riot control agents against our military?

Mr. BENKERT and General MANNON. We would not want hostile military forces to use riot control agents against our military forces. However, if this occurred, our Armed Forces are trained to operate in such an environment.

RIOT CONTROL AGENT AUTHORITIES AND CAPABILITIES

8. Senator AKAKA. Mr. Benkert and General Mannon, with respect to riot control agents, do U.S. military forces have all the authority and capability necessary, consistent with U.S. policy, law, and treaty obligations?

Mr. BENKERT and General MANNON. Combatant commanders currently have all of the authorities they have asked for regarding the use of riot control agents consistent with the Chemical Weapons Convention and Executive Order 11850.

VIEWS OF COMBATANT COMMANDERS

9. Senator AKAKA. Mr. Benkert and General Mannon, as a general matter, did the combatant commanders express the view that there would be a high utility to the use of riot control agents in a manner that would not be consistent with U.S. policy?

Mr. BENKERT and General MANNON. [Deleted.]

ALTERNATIVES TO RIOT CONTROL AGENT USE

10. Senator AKAKA. General Mannon, section 1232(b)(2)(D) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) requires a "summary of the views held by combatant commanders of United States combatant commands as to the utility of the use of riot control agents by members of the Armed Forces when compared with alternatives." What alternatives were considered, and did they include other nonlethal weapon alternatives?

General MANNON. [Deleted.]

[Whereupon, at 10:24 a.m., the subcommittee adjourned.]

